

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.19009 of 1997

Date: 15.03.2007

Between:

Sd. Shabbir

... Petitioner

AND

The Managing Director, APSRTC,
Musheerabad, Hyderabad & another.

... Respondents

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.19009 of 1997

ORDER:-

The petitioner in this writ petition sought for a Mandamus to declare the action of respondent No.2 in conducting recruitment for the post of Cleaner by ignoring the claim of the petitioner, as illegal, arbitrary and violative of Article 21 of the Constitution of India.

The petitioner applied to the respondents for providing him compassionate appointment in place of his father one Khasim, a driver of Ongole depot, who retired on 07.04.1992, on the ground of medical invalidation. The petitioner made claim in terms of circular No.112/87 dated 05.10.1987, which provided for a quota to appoint children of the employees, who retired on the ground of medical invalidation. As the petitioner was not provided with employment, he filed W.P.No.29550 of 1995. The said writ petition was disposed of, following an earlier order passed in W.P.No.1611 of 1994 and batch dated 27.11.1995, with a direction that the respondents while making appointments on compassionate ground shall always take into consideration the priority laid down in circular No.PD-112/1987 dated 05.10.1987 and that the respondents shall complete the exercise of finalizing the priorities

mentioned in the order, within a period of three weeks from the date of receipt of that order. In compliance of the said order, the 2nd respondent issued proceedings dated 06.11.1996 wherein it is mentioned that following the order of preference contained in circular No.112 of 1987 dated 05.10.1987, a list was prepared with 80 names whose applications for employment were pending and that the petitioner figured at Sl.No.19 and that there are 18 applicants above him, waiting for appointment as per the order of preference in the said circular. It was also mentioned in the said proceedings that no direct recruitment was conducted in Prakasam region since 1990 in the category of Cleaner for want of vacancies. It is also mentioned that though the petitioner does not stand a chance for appointment as Cleaner as per the circular dated 05.10.1987, however, his case will be considered in future for the post of Cleaner as and when his turn comes as per the order of preference in the said circular under 30% quota, if he is willing to accept the post of Cleaner. It is further stated that the scheme of compassionate appointment of children of retired employees envisaged in circular dated 18.02.1992 was cancelled on the ground that giving reservation to the children of the employees on compassionate grounds in recruitment of Conductors is invalid and impermissible in law.

Counter-affidavit is filed by the Law Officer, APSRTC, Musheerabad, explaining the scheme contained in the circular dated 05.10.1987. It is stated that since the Supreme Court of India in several judgments declared the scheme itself as unconstitutional, the earlier circulars providing for compassionate

appointments were withdrawn by circular dated 15.02.1995. It is also stated that a Division Bench of this Court in a judgment reported in **Shaikh Ahmad Ali Shah and Another v The Divisional Manager, APSRTC, Kakinada and Another**^[1] held that the reservation provided for descendants of the employees of the Corporation is opposed to Article 16(1) and (2) of the Constitution of India and that no mandamus could be issued for implementation of various circulars issued by the Corporation earlier.

Heard the learned counsel for the petitioner and Sri R.Manmadha Reddy, learned Standing Counsel appearing for the respondents.

The petitioner is not entitled to appointment on both counts viz., that above him there were 18 candidates, who are waiting in the list for being appointed in the same quota as the petitioner is claiming. Till such time as the said 18 candidates are appointed, the petitioner cannot claim appointment.

In **State of Haryana Vs. Rani Devi**^[2] the Supreme Court held that appointment on compassionate ground cannot be claimed as a matter of right. In **Umesh Kumar Nagpal Vs. State of Haryana**^[3] the Supreme Court held that as a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his

family without any means of livelihood and that in such cases the object of providing compassionate appointment is to enable the family to get over sudden financial crisis. It was held therein that such appointments on compassionate grounds have to be made in accordance with the rules, regulations or administrative instructions, taking into consideration the financial condition of the family of the deceased. In **Sushma Gosain Vs. Union of India**^[4] it was held by the Supreme Court that if the employee dies in harness leaving a minor behind him, the employer cannot wait till the minor attains majority to appoint him on compassionate ground unless scheme itself specifically provides for such a course. The Supreme Court in **Punjab National Bank Vs. Ashwini Kumar Taneja**^[5] reiterated these principles.

In **Shaikh Ahmad Ali Shah and Another (1 supra)** a Full Bench of this Court held that the reservation provided for descendants of the employees of the Corporation is opposed to Article 16 (1) and (2) of the Constitution of India and that no mandamus can be issued.

In the light of the aforementioned judgments no mandamus as sought for by the petitioner can be issued and accordingly, the writ petition is dismissed. No order as to costs.

C.V.NAGARJUNA REDDY, J

Date: 15.03.2007
ES/mdaa

^[1] 1996(3) ALT 994

^[2] (1996) 5 SCC 308

[\[3\]](#) (1994) 4 SCC 138

[\[4\]](#) (1989) 4 SCC 468

[\[5\]](#) 2004(7) SCC 265